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|--|---|--------------------|
| In re Application of:                    | : |                    |
| OLSSON, Bertil; et al.                   | : | DECISION REGARDING |
| U.S. Application No.: 10/507,474         | : | SUBMISSION UNDER   |
| PCT No.: PCT/SE03/00368                  | : | 37 CFR 1.42        |
| International Filing Date: 05 March 2003 | : |                    |
| Priority Date: 11 March 2002             | : |                    |
| Attorney's Docket No.: P15365-US1        | : |                    |
| For: OPTICAL FIBRE FEED ARRANGEMENT      | : |                    |

This communication is issued in response to applicants' submission on 03 March 2005 of a declaration executed on behalf of the deceased inventor, which has been treated as a submission under 37 CFR 1.42.

### **BACKGROUND**

On 05 March 2003, applicants filed international application PCT/SE03/00368 which claimed a priority date of 11 March 2002 and which designated the United States. On 18 September 2003, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was 11 September 2004 (thirty months from the priority date).

On 10 September 2004, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 22 February 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date were required.

On 03 March 2005, applicants filed the response considered herein. The response included payment of the required surcharge and declaration materials executed by the two surviving inventors and on behalf of deceased inventor Bertil OLSSON by his Executors, Agneta FAST-KARBERG and Maria BERGLUND.

### DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

37 CFR 1.497(b)(2) requires that citizenship, mailing address, and residence information be provided for **both** the deceased inventor and the legal representative. The regulation expressly requires the inclusion of this information for the legal representative. As for the deceased inventor, such information is required because the legal representative must declare to all the facts which the inventor would have been required to state, and citizenship, residence and mailing address are among the facts which the inventor would have been required to set forth pursuant to 37 CFR 1.497(a) and 37 CFR 1.63.

Here, the declaration document complies with 37 CFR 1.497(b)(2), discussed above, in that it includes the name, citizenship and residence information for the deceased inventor and for the Executors, as required. The declaration also expressly states the relationship of these persons to the deceased inventor (i.e., "Executor" of the deceased inventor's estate). However, the declaration document submitted appears to be a compilation of at least two copies of the declaration, which is not acceptable (see MPEP § 201.03, page 200-7: "Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration"). This is evidenced by the fact that the filed declaration materials include two different copies of "Page 3 of 5" (one executed by each of the Executors).

Because the declaration submitted is not in an acceptable form, the declaration cannot be accepted under 37 CFR 1.497 and 1.42.

### CONCLUSION

The 03 March 2005 filing under 37 CFR 1.42 and 1.497 is **REFUSED** without prejudice.

Applicants have **TWO (2) MONTHS** from the mailing date of this communication to submit a proper response under 37 CFR 1.42 and 37 CFR 1.497. Failure to provide a proper and timely response will result in abandonment. Extensions of time are available under 37 CFR 1.136(a).

A proper response must include complete copies of all executed declarations. Such declarations must include all the information required under 37 CFR 1.497.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration

A handwritten signature in black ink, appearing to read 'RMR', is positioned above the typed name of the signatory.

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